Supreme Court, U.S.
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No. 95-908

In the Supreme Court of the United States

OCTOBER TERM, 1995

CONTEL CELLULAR INC. AND
CONTEL CELLULAR OF ILLINOIS, INC.,

Petitioners,

v.

LEAF RIVER VALLEY CELLULAR TELEPHONE
CO., INC., AND CENTRAL CELLULAR
TELEPHONES, LTD.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF ILLINOIS

REPLY TO RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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Respondents have raised a new issue in their response and have made erroneous statements of facts

that compel this reply by petitioners to Respondents' Brief in Opposition to Petition for Writ of Certiorari.

This Court has Jurisdiction Under Section 1257.

The respondents submit a rather weak argument that this Court lacks jurisdiction. In arguing that the order of the Supreme Court of Illinois is not final under 28 U.S.C. § 1257, respondents miss the critical procedural point in this case. The state trial court erred in denying the motion to dismiss for lack of subject matter jurisdiction because the relief sought was within the exclusive jurisdiction of the FCC. If the motion is granted it ends the case. The federal issue of pre-emption is conclusive on the outcome. This Court pointed out in *Cox Broadcasting Corp. v. Cohn*[1] four categories that would meet the requirements of section 1257. Only one of the requirements need be met to satisfy section 1257. This Court held that if the outcome would be conclusive the finality requirement of the statute is met. A second requirement is also met by this case because regardless of the state court proceedings the federal Constitutional question will survive. Another criteria for finality under section 1257 is also met because reversal of the state court by this court would preclude any further action in the state court.

This Court has read section 1257 broadly in order

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[1] 420 U.S. 469 (1975).

to further important federal policy issues.[2] This case raises an important federal question involving the conflict between the states and the FCC concerning national telecommunications policy that warrants review. Section 1257 concerns jurisdiction. Respondents' are attempting to convert the statute to an agenda-setting device for the Court. Clearly, this court has jurisdiction to review this decision under section 1257 and the Supremacy Clause of the Constitution. The question of whether it is ripe or deserving of consideration by this Court goes not to jurisdiction, but to the substantive question of whether an issue of important federal constitutional jurisprudence is raised. Petitioners submit that it is raised because of (1) the national economic impact of telecommunications and (2) the conflict between state and federal regulatory roles.

STATEMENT OF FACTS

The respondents have gone outside the record that was before the Supreme Court of Illinois in referring to an amendment to their complaints which eliminated "the request for relief that sought to require Contel to share all benefits from its interest in Illinois 1."[3] That amended complaint was not before the appellate courts. It was not filed in the circuit court until after the decision by the Appellate Court of Illinois. Nonetheless, petitioners make

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[2] *Construction Laborers v. Curry*, 371 U.S. 542 (1963).

[3] *See* Respondents Brief in Opposition to Petition for Writ of Certiorari at p. 5.

this response to clarify the erroneous statement regarding respondents' amended complaints.

What respondents fail to mention is that the Circuit Court granted them leave to amend upon condition that their request for an accounting remain in the complaints.[4] The transcript of the hearing before the state trial court regarding the amended complaint is found in the Supplemental Appendix attached hereto.

The issue raised by the original complaints is retained by the trial court: namely that the relief respondents seek would give them a share of the ongoing profits of the business. It is that sharing of profits that brings into question the FCC's regulation because it would involve ownership interest in both licenses in the same market. If this Court holds that the state action is preempted, it disposes of the case.

Respondents argue that they only seek money damages by amending their complaint. That is simply untrue. They seek the equitable remedy of an accounting of profits derived from the alleged partnership opportunity. Their amended complaint as permitted by the trial court, did not change the nature of the relief sought as is shown by the transcript of the hearing before the trial court. Contrary to respondents assertions, the issues raised before this Court have not been mooted.

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[4] Hearing Transcript, Circuit Court for the 17th Judicial Circuit County of Winnebago, August 11, 1995. Supplemental appendix hereto. (A -18).

FCC Has Not Agreed With State Court Interpretation of Section 414

The FCC most recently in *Richmond Bros. Records, Inc. v. U.S. Sprint Communications Co.*,[5] held that section 414 does not give state courts the right to entertain an action that conflicts with other provisions of the Communications Act and or FCC regulations. That decision, however, notes a conflict among courts regarding the interpretation and application of section 414.[6] That conflict is what this case is about and the reason why review by this Court is needed.

CONCLUSION

The importance of a uniform national telecommunications policy is reflected in Congress' adoption of the OBR Amendment[7] exempting cellular from state regulations. Section 414 should not be a barrier to this federal policy. For the foregoing reasons respondents are wrong and the writ should be granted.

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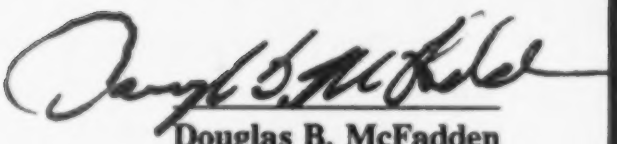
[5] FCC Docket No. DA 95-2438 (Common Car. Bur.)(Released Dec. 13, 1995).

[6] Id. at note 24.

[7] Petition for Writ of Certiorari at p. 4.

Respectfully submitted,



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SUPPLEMENTAL APPENDIX

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE 17TH
JUDICIAL CIRCUIT
COUNTY OF WINNEBAGO

LEAF RIVER VALLEY CELLULAR TELEPHONE CO., INC.,	)
	)No. 94-CH-148
Plaintiff,	)
v.	)
CONTEL CELLULAR, INC., a Delaware Corporation, and CONTEL CELLULAR OF ILLINOIS, INC., an Illinois Corporation,	)
Defendants,	)
and	)
ROCKFORD MSA LIMITED PARTNERSHIP, an Illinois Limited Partnership,	)
Nominal Defendant.	)
CENTRAL CELLULAR TELEPHONES, LTD., an Illinois corporation,	)
Plaintiff,	)

v.	)
CONTEL CELLULAR INC., a Delaware corporation, and CONTEL CELLULAR OF ILLINOIS, INC., an Illinois corporation,	)No. 94-CH-151
Defendants.	)
and	)
ROCKFORD MSA LIMITED PARTNERSHIP, an Illinois Limited Partnership,	)
Nominal Defendant.	)

REPORT OF PROCEEDINGS at the Hearing of the above-entitled cause before the Honorable Gerald F. Grubb, Judge of said Court, on Friday, the 11th day of August, A.D., 1995.

APPEARANCES:

MS. KATHLEEN ROACH,
Attorney-at-Law,

on behalf of the Plaintiffs.

MR. JEFFREY M. CROSS and

MR. PETER CARLSON,
Attorneys-at-Law,

on behalf of the Defendants
Contel Cellular, Inc. and
Contel Cellular of Illinois, Inc.

Kathi Anderson, CSR, RPR
Official Court Reporter
License No. 084-002107

THE CLERK: 94-CH-148 94-CH-151.

MS. ROACH: Kathleen Roach represents the plaintiff in the consolidated cases.

MR. CROSS: Jeffery Cross and Peter Carlson from Kelley Drye & Warren represents both defendants Contel Cellular and Contel Cellular of Illinois.

MS. ROACH: We are here this morning for argument on Plaintiff's Motion for Leave to Amend their complaints.

Just a brief bit of background on the case, both the allegations made and the procedural posture, Your Honor, Plaintiffs are limited partners in a partnership formed for the purpose of providing cellular telephone service in what is know as the Rockford Metropolitan Statistical Area or the Rockford MSA. The partnership was formed with a partnership agreement, and this agreement contains a provision which forms the basis for the breach of contract county in each of the Complaints.

That provision states basically that the -- any applications by the general partner, and the general partner in this case is Contel - any applications by the general partner or its affiliates to provide cellular service in areas adjoining the Rockford MSA shall be deemed to be made on behalf of the partnership.

Contel filed an application to provide cellular telephone service in an area known as Illinois RSA 1. RSA stands for Rural Service Area. And RSA -- Illinois RSA 1 does adjoin the Rockford MSA. And plaintiff's have alleged that by virtue of Section 818 of the partnership agreement, the section I just paraphrased to you a moment ago, that Contel's application in Illinois RSA 1 shall be deemed to be made on behalf of the partnership.

Plaintiffs have also alleged in the second counts of their Complaints that the same conduct violated Contel's fiduciary obligations that they owe as general partner to the limited partners, in this case the plaintiffs.

The breach of fiduciary duty law is similar to the issue of the corporate opportunity doctrine. Someone such as the general partner of a partnership when opportunity becomes available to it cannot seize that opportunity for itself to the detriment of those to whom it owes fiduciary obligations, in this case the limited partners.

That, in brief, is what the allegations, --the substantive allegations of the Complaints are.

In the original Complaints plaintiffs had a request for compensatory damages but also had certain requests

for equitable relief. And those requests included a request for an accounting and a request for an injunction for Contel to transfer the benefits of its ownership in RSA 1 which I should retreat for a moment. Contel's application to provide cellular service in RSA 1 with the FCC is successful and Contel is now providing such service along with a limited partner. After the Complaints were filed, defendants moved to dismiss alleging statute of limitations and also raising FCC preemption issues. And in the course of their Motion to Dismiss defendants characterized plaintiffs -- the thrust of plaintiffs request for relief is a request that Contel transfer its interest in RSA 1 to the partnership. And what plaintiffs have said repeatedly both in arguments to the trial court and in their papers in the trial court and in the appellate court that's really not what plaintiffs were interested in. What plaintiffs were interested in was substitutional relief, not specific performance. What they wanted was compensatory damages to compensate them for the value of the opportunity which was taken by Contel to the detriment of the plaintiffs. Contel nevertheless pressed its argument that what we were really seeking was specific relief. But the trial court denied the Motion to Dismiss, and the appellate court affirmed that ruling and found that plaintiffs' Complaints did indeed state a cause of action as pled in their original form. Notwithstanding defendants' arguments regarding -- their argument that because we were seeking in -- according to them, specific performance, it raised issues regarding potential violation of FCC rules.

THE COURT: Did it really say that it stated a cause of action? Wasn't the opinion from the appellate court basically saying no, there's no preemption?

MS. ROACH: That's true. I think --

THE COURT: They didn't really say there's a cause of action.

MS. ROACH: The appellate court did not say that there was a cause of action but they affirmed the ruling denying the Motion to Dismiss and allowed the Complaints to go forward.

At the same time that the appellate court was issuing its ruling, I think, in fact, the day before plaintiff's counsel received the ruling we filed a Motion for Leave to Amend our Complaints to eliminate the confusion that had arisen as a result of our original Complaints where plaintiff and defendant disagreed as to what relief plaintiff was seeking which is sort of an odd situation in a case. It should be clear and apparently from our original Complaints it wasn't clear, and we wanted to make it clear. And our original Complaints are virtually identical to the Amended Complaints that we want to file with the exception that we are seeking to remove the incidental request for equitable relief that we had included the first time around which Contel found to be problematic. And since we have said all along that what we really want is compensatory damages we will make that clear in our Complaints. So our Motion for Leave to Amend seeks to give us leave to file Complaints -- Amended Complaints which seek compensatory relief and do not seek the other forms of relief which Contel found to be problematic the first time around.

Defendants have obviously opposed our Motion for Leave to Amend for a number of reasons. Much of their brief filed in opposition to our motion focuses on whether

or not they will still be able to maintain various of their affirmative defenses. And our position, Your Honor, is that it is simply premature. We are not there yet. Whether or not they will have affirmative defenses to our Amended Complaint is not an appropriate issue to consider now on the issue of whether or not we should be allowed to amend our Complaint in the first instance. And the Illinois case law identifies the issues to be considered in determining whether or not a Complaint should be amended, and whether or not defendants will have -- still be able to plead the same affirmative defenses, it is not an appropriate issue to consider at this time. I expect that we will get there. As far as whether or not their affirmative defenses will be valid. But it is simply not an appropriate issue to consider at this time. What the Illinois cases say, indeed going a step back as far as Contel also argues that the Amended Complaint doesn't state a cause of action, even that is not the appropriate issue to consider at this time under the circumstances. The Illinois courts have said that the appropriate method of challenging the sufficiency of a Complaint is through a Motion to Dismiss, not by opposing a Motion for Leave to Amend in the first instance.

Now there are times when it is appropriate to consider whether or not the Amended Complaint will state a cause of action. But that's where the original Complaint was dismissed for failure to state a cause of action. And it is appropriate at that time for the courts to consider whether amendments would be futile. If the first time around they, the plaintiffs, were not able to succeed in stating a cause of action, especially if it's been two or three times and it is now a Fourth Amended Complaint, it is appropriate for the court to say we are

really wasting everybody's time here; it's the forth Complaint. The first Complaint survived a Motion to Dismiss not only in the trial court but in the appellate court as well. The appellate court found that the Complaint -- found that the Motion to Dismiss was properly denied and considered Contel's arguments about the various equitable forms of relief that were requested and nevertheless found that there was no preemption based on the arguments that Contel made based on their theory that we were really seeking specific performance.

The other prong of Contel's argument now in opposition to the Motion for Leave to Amend is that our amended Complaints are not valid because we do not seek an accounting. And what Contel has said is that an accounting is absolutely necessary in actions between partners involving claims of breach of fiduciary duty. And that is simply not the law in Illinois. Although there are certain times where it is appropriate to have an accounting, and, in fact, there are times where it is necessary to have an accounting, those times are limited to where it is necessary to delve into the partnership's accounts. And the general rule that an accounting is necessary in actions between partners is subject to a fairly substantial exception which is that an accounting is not necessary where one does not need to delve into the partnership's accounts in order to decide the action and award relief.

This is one of those cases. Our claim is for damages relating to the value of Contel's interest in RSA 1. In order to determine what that value is we do not need to get into the accounts of the Rockford partnership.

THE COURT: I don't understand how you would

be able to avoid that.

MS. ROACH: The interest in Illinois RSA 1 that Contel has which we claim was wrongfully denied to the limited partners may be valued in a couple of different ways. One way that it may be valued is by determining a market value though comparisons with other similarly situated rural service areas. I am not -- And this is sort of taking it out of the air. Which three, for example, is a RSA which is similar and that has been sold recently under similar circumstances; one can determine what the value per population equivalent is in that RSA and then determine what the value -- the value per population equivalent should be in Rockford RSA 1 and come up with a value for Contel's interest.

Another way of doing it is with a discounted cash flow and look at what Contel's experiencing in Illinois RSA 1, project that out into the future based on their experience in Illinois RSA 1 and discount it to present value. But in either case are you getting into what the accounts are between the plaintiffs and Contel in the Rockford partnership. The only way that comes into play is once you come up with a value for RSA 1 you have to determine what percentage plaintiffs would be entitled to. An that's basically their percentage in the Rockford partnership.

THE COURT: Doesn't it necessarily then involve partnership expenses to have to be deducted from that to arrive at a profit?

MS. ROACH: I apologize, Your Honor. My mind is blank at the moment as to what exactly the interest is.

THE COURT: I mean your client would not be entitled to more than what his partnership interest would be.

MS. ROACH: What my client would be entitled to is -- Correct. If my clients have 20 percent and I just don't recall right now what the percentage is. Actually it's more like 48 or something, isn't it? Anyway.

MR. CROSS: You have two clients. They each have 20 percent.

MS. ROACH: Okay. 40 percent. What my client would be entitled to is 40 percent of Contel's interest in Illinois RSA 1. And you don't need to get into determining what expenses and so forth they would have to pay because what we are doing is valuing the opportunities that Contel took for itself.

THE COURT: I guess I am still looking at it from the standpoint that the damage that Leaf River has can't be more than what they would have gotten out of the partnership had there been a partnership interest in RSA.

MS. ROACH: Well, that is certainly correct, Your Honor. But I don't think that determination requires more than a multiplication by the interest held by my clients. And even -- If you are going to get into the details of what's going on at Illinois RSA 1 and what Contel has paid out in capital expenditures to bill out that system and that sort of thing, that's not partnership's accounts. The partnership that our clients are in with Contel is the Rockford partnership and the Rockford partnership's accounts are not going to be involved at all in that inquiry.

THE COURT: Aren't there just general expenses of the partnership that can be deducted from the whole pot? That would actually cause a diminution of the profit out of the RSA 1, right?

MS. ROACH: Contel is already running RSA 1 and has expenses. . . The expenses that Contel incurs in running RSA 1 are already taken into account because it has those expenses and they are currently charged to RSA 1. So those expenses would already be considered. And it would be double counting if you then placed them into the Rockford partnership.

THE COURT: What's the Rockford one?

What is that?

MR. CROSS: MSA.

THE COURT: What is they were running at a loss. Couldn't they write the loss off against the profit on RSA 1? I mean isn't that what partners do?

MR. CROSS: (Nods head)

MS. ROACH: Hypothesizing RSA is running at an overall gain? That might make some difference in terms of what taxes are paid. But whatever -- If MSA is running at a loss our clients are already affected by that because they are in the partnership. And if RSA 1 partnership is running at a gain that would be considered in the context of performing the damages calculation. But I don't think there's any difference here if plaintiffs weren't in a partnership with Contel at all. If plaintiffs had a contract with Contel that said any application that Contel makes in

Illinois RSA 1 shall be deemed to be on our behalf and there's no partnership -- there's no Rockford partnership involved at all, the damages calculation is going to be no different.

THE COURT: What is it that they are in then? They are in a partnership.

MS. ROACH: They are in a partnership.

THE COURT: The partnership would only be the RSA 1. It wouldn't be the MSA. My understanding is that they are involved in -- If your analysis is right, the RSA 1 venture is a part of the MSA partnership.

MS. ROACH: If Contel had abided by its contractual and fiduciary obligations that would be true. But Contel has not done that. It has refused to do that. It says it has no obligation to do that. And we are not asking them to do that at this point. We are saying fine, you took the corporate opportunity, you pay for it in terms of damages; don't bring it into the partnership, it's not going to work at this point in time. In the meantime our client went out and got an interest in the competing system -- Not our client. One of the subsidiaries our our clients -- of my client went out and got an interest in the competing system in Illinois, RSA 1.

THE COURT: That was obtained afterwards?

MS. ROACH: That was obtained well afterwards by several years. And because of that under FCC rules the Illinois RSA 1 interest that Contel holds can't be transferred to the partnership without causing problems with FCC regulations.

THE COURT: You are saying at the time that they got the RSA 1 there was no prohibition.

MS. ROACH: That's correct. I believe the applications were filed in 1988 with Illinois RSA 1 and it wasn't until I believe the spring of 1992 that the subsidiary of my clients obtained the interest in the competing system.

MR. CROSS: Your Honor, let me cut to the last point so there's some clarification. The FCC prohibition against what is called cross-block ownership has always existed. But it wasn't until subsidiaries of the plaintiffs went out in 1992 and got the competing RSA interest that the cross-block ownership prohibition would come into effect. That's that cross-block ownership issue that forms the nub here of the dispute as to the characterization of the relief. Because the Federal Communications Commission rules provide that either directly or indirectly an entity can't have an interest in the two competing systems.

What is a direct or indirect interest in a competing system is at the heart of the relief here. Well, it's at the heart of the motions before Judge Penniman as to whether there was a preemption or not. And it was at the heart, I believe, of the Illinois appellate court. The Illinois appellate court did not make a finding as to whether this cross-block ownership was violated or not. All it held was that this court had jurisdiction in order to consider that issue applying whatever FCC standards this court would apply. But it did not decide whether there was that cross-block ownership.

The relief here is -- And what the relief ultimately

is is critical in terms of that issue. And I would submit to Your Honor that although Illinois does recognize that liberal right to amend, although I also submit that you can find cases at both extremes, what we are really doing here is we are doing a mere characterization of the relief and the guts of the relief is not changed at all. So in effect what counsel is saying to you is that by merely characterizing the relief they are going to try to avoid the dilemma that they find themselves in with the cross-block ownership issue. But I would submit to you that that characterization can't do it in this court not to just buy that -- into that characterization by allowing an amendment.

Your Honor, there is no need for them to amend in order to make the arguments that the relief that they really want is something other than the direct or indirect benefits that would violate the cross-block ownership. It doesn't change the essential nature of the case by making this amendment.

They say that they are going to eliminate the ancillary relief of accounting. But in effect they are not going to eliminate the ancillary relief. I think this court was right on the money in terms of its analysis. Because they say that they want the value of the RSA 1 partnership. But that value can't be taken out of context in the abstract. It has to be the value of the Rockford MSA partnership. The Rockford MSA partnership has a wholly different capital distribution structure, for example, than the RSA. When you said, Your Honor, that in your view you didn't see how Miss Roach's clients could get anything more than their partnership interest, I would agree with that. And the definition of their partnership interest means their interest after their capital

contributions after they take a percentage of the losses or the gains depending on what those are based on the Rockford partnership.

Now the RSA built seven cellular sites. Quite unusual for a RSA in this country. Because of the corridor, the I-80 and other corridors between Chicago and the Quad Cities. They built those all along except for one up in Freemont. That was a huge capital contribution. When you analyze the value of the RSA to the Rockford MSA and now have to take that into account with the new partners making a capital -- whether they actually make the capital contribution or you consider it as part of the math in calculating the relief, you are going to have to consider that capital contribution. There may be losses. Plaintiffs may owe Contel.

Contel by the way provided all the capital on the RSA. But in the Rockford MSA did not. Ameritech, Leaf River, Central Cellular, the others provided percentages of capital pursuant to the agreement. They may owe us money so that in determining that value you've got to take it into context of the Rockford MSA. So there is going to be an accounting of the benefits in the context of the Rockford MSA. And Illinois law does support that when you are looking at the issue of the partnership arrangement you've got to consider an accounting. Now there are exceptions to that rule but I would submit those exceptions don't apply here. Because this really is a damage to the partnership. And, in fact, they have sued in the partnership's name as well as in their individual names as a partnership because what they are saying is that the value of the RSA was a value to the partnership of which we as limited partners get a right.

So that the Rockford partnership is a party here.

Sidley & Austin ar very good attorneys, and I respect them highly, and I think it is significant that they originally filed this Complaint in chancery and added an accounting here. Because they recognize that in that situation and the situation we have an accounting was necessary. And I touched on that.

THE COURT: The new Compliant does not have an allegation for accounting?

MR. CROSS: That's correct. But the point I am making, Your Honor, is that's just a use of words. In effect, when you look behind those words you are still going to have to have an accounting. You are still going to have to have all the issues that will ultimately lead this court to make a determination as to whether the cross-block ownership rules are violated or not, as to whether there is a direct or indirect benefit here.

So I would submit that this court shouldn't really be a party to an attempt to manipulate the words in order to -- There's no question that the second step in this process on behalf of the plaintiffs is going to be then to move to strike our affirmative defenses, and I would grant that the affirmative defenses later on can be addressed at a second step. What I am saying here now is there's really no need for us to go through all these multiple steps because they are not really changing the guts and the substance of this Complaint. It's a mere choice of words in terms of the characterization of the relief.

Your Honor the appellate court, in effect, recognized in its opinion that what they were claiming was

compensatory damages. And they recognize that we said well, those are words they have chosen in order to avoid the problems of cross-block ownership. Because they realize if they directly ask for the license they would run up against that cross-block ownership because they went out and got the competing interest. The appellate court said we are going to allow the circuit court to determine whether there's an indirect or direct benefit that is being sought that would violate the cross-block ownership. So the appellate court recognized these two arguments in its opinion.

I would submit to you what is really happening -- I can't dispute the timing other than the fact that the appellate court's opinion came down March 21st. They filed their Motion to Amend on the 23rd. They claim they didn't get the opinion until the 24th. So be it. But the point is that the ultimate effect here is that they are running from the fact that the appellate court -- Now in front of you they are running from the fact that the appellate court has recognized that this issue is going to be before the court regardless of how they calls the words.

My point is you don't need to amend for this court to address that issue. We ought to address that issue head-on as to whether there's a cross-block ownership issue as well as there's the equitable remedy of accounting as well as to the other defenses here, Your Honor.

THE COURT: Anything else?

MS. ROACH: Your Honor, just very briefly. Whether or not our requested relief poses an issue with the cross-block ownership, we contend that it doesn't, they contend that it does, shouldn't affect whether or not you

grant us leave to amend the Complaints. Whether or not there are defenses which may be asserted to the relief requested shouldn't be an impediment to granting the Motion for Leave to Amend.

The Illinois case law is that leave to amend should be granted freely. And although Contel has argued that an accounting is necessary, the rule in Illinois is that one partner can bring an action against a co-partner if the plaintiff's claim can be decided without a full review of the partnership accounts. And I am quoting from the Century Universal Enterprises against Triana Development Corp. case. There are several cases to the same effect. Our contention is that's what the case is here. There is no full review of the partnership accounts which is necessary.

THE COURT: Okay. I disagree. I think you are probably going to have to have a full review of the partnership accounts in order to accomplish this. I would give you leave to amend but I would have to condition that upon you including within your Compliant the accounting provisions.

MS. ROACH: Okay. Thank you, Your Honor.

THE COURT: How soon can you do that?

MS. ROACH: We should be able to get something on file by the end of next week. A week from today, Your Honor.

THE COURT: At that point in time I will allow you to respond. The affirmative defenses may have to be restated depending upon how the Complaint comes out.

MR. CROSS: 28 days, Your Honor? The only reason I ask, I don't necessarily need so much time. Mr. Carlson and I may have to try a case --

THE COURT: 28 days to respond.

MS. ROACH: Thank you, Your Honor.

(Which were all the proceedings of record on this date.)

STATE OF ILLINOIS

IN THE CIRCUIT COURT OF THE

17TH JUDICIAL CIRCUIT

COUNTY OF WINNEBAGO

CERTIFICATE

I, Kathi Anderson, CSR, RPR, an Official Court Reporter, Seventeenth Judicial Circuit, Counties of Boone and Winnebago, State of Illinois, do hereby certify that I reported in stenotypy the above-entitled cause, and that I thereafter transcribed into typewriting this Report of Proceedings which I hereby certify is a true and correct transcript of said proceedings had before the Honorable Gerald F. Grubb, Judge of this Court, on the 11th day of August, 1995.

IN WITNESS WHEREOF I have hereunto set my hand this 20th day of September, 1995.

/s/ Kathi Anderson, CSR, RPR
Official Court Reporter
License No. 084-002107